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2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4 WESTERN DIVISION

5 -----  
6 CE SOIR LINGERIE CO., INC., d/b/a  
7 FASHION FORMS, INC., d/b/a  
8 LINGERIE SOLUTIONS,

Plaintiff(s),

-v-

Case No.:

2:11-cv-07291 DMG(FMOx)

9 IMAGINE ENTERPRISES, LLC.,

Defendant(s).

10 -----  
11 IMAGINE ENTERPRISES, LLC.;  
12 TARA CAVOSIE,

Counter-Claimant(s),

-v-

13 CE SOIR LINGERIE CO., INC., d/b/a  
14 FASHION FORMS, INC., d/b/a  
15 LINGERIE SOLUTIONS; BEVERLY  
16 ANN DEAL,

Counter-defendant(s).

17 -----  
18 VIDEOTAPED DEPOSITION OF:

19 TARA CAVOSIE

20 HELD: Tuesday, August 14, 2012

21 ALBANY, NEW YORK

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25 REPORTED BY: ROBERTA-ANNE SCHMITT

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ED ROY, VIDEOGRAPHER

## I N D E X

## TO TESTIMONY

WITNESS	BY	PAGE
Tara Cavosie	MR. CARSTEN	13

## TO EXHIBITS (Attached to transcript)

MARKED FOR ID	DESCRIPTION	PAGE
Plaintiff's 1	United States Patent No. US 6,231,424 B1	7
Plaintiff's 2	United States Patent No. US 6,257,952 B1	8
Plaintiff's 3	United States Patent No. US 6,383,055 B2	8
Plaintiff's 4	United States Patent No. US 6,231,424 B1, previously Bates stamped IMAGINE000001 through 126	8
Plaintiff's 5	Declaration of Tara Cavosie in Support of Imagine's Opening markman Brief Addressing U.S. Patent Nos.: 6,231,424, 6,257,952, and 6,383,055	8
Plaintiff's 6	Document identified as Document 38-1 filed 07/26/12 Page 2 of 27	8
Plaintiff's 7	Joint Claim Construction Statement	9
Plaintiff's 8	United States Patent No. 4,992,074, previously Bates stamped Ce Soir 003729 through 3733	9
Plaintiff's 9	United States Patent Number 5,755,611 previously Bates stamped CeSoir003854 through	9

## TO EXHIBITS (cont'd)

MARKED FOR ID	DESCRIPTION	PAGE
Plaintiff's 10	United States Patent, Mellinger, 3,934,593, previously Bates stamped CeSoir003577 through 3580	9
Plaintiff's 11	Document dated Jan. 20, 1959, N. D'Or, 2,869,553, previously Bates stamped CeSoir003426 through 3428	10
Plaintiff's 12	Document dated Feb. 14, 1939, J. Lazzari, 2,147,375, previously Bates stamped CeSoir003303 through 3305	10
Plaintiff's 13	Document dated May 4, 1937, M. Schottenfels, 2,079,426, previously Bates stamped CeSoir003291 through 3294	10
Plaintiff's 14	Document dated Sept. 7, 1965, J. Winkler, 3,204,638, consisting of three pages	10
Plaintiff's 15	Document indicating No. 494,397, M. Tucek, Patented Mar. 28, 1893, previously Bates stamped CeSoir003726 through 3728	10
Plaintiff's 16	Document dated Nov. 17, 1936, H. Klein, 2,061,238, consisting of two pages	11
Plaintiff's 17	8 1/2 x 14 document entitled Intrigue, The Original No Back, Strapless Bra, previously Bates stamped CeSoir001347	11
Plaintiff's 18	United States Patent Number Des. 419,279, previously Bates stamped CeSoir004481 through 4483	11

TO EXHIBITS (cont'd)

MARKED FOR ID	DESCRIPTION	PAGE
Plaintiff's 19	Photocopy of bra	46
Plaintiff's 20	StayKup, Nude, Size B	58
Plaintiff's 21	Fashion Forms StayKups box	59

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and  
between the attorneys for the respective parties  
hereto that filing, sealing and certification be  
and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all  
objections, except as to the form of the  
question, shall be reserved to the time of the  
trial.

IT IS FURTHER STIPULATED AND AGREED that the  
within examination may be subscribed and sworn  
to before any notary public with the same force  
and effect as though subscribed and sworn before  
the court.

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2 THIS IS THE ORAL DEPOSITION OF TARA  
3 CAVOSIE, the/on behalf of the DEFENDANT herein,  
4 produced pursuant to AGREEMENT on Tuesday,  
5 August 14, 2012, before ROBERTA-ANNE SCHMITT, a  
6 Court Reporter and Notary Public in and for the  
7 State of New York.

8 \* \* \* \* \*

9 THE REPORTER: Would you  
10 please state your name for the  
11 record.

12 THE WITNESS: Tara Cavosie.

13 THE REPORTER: Would you  
14 please state your address for the  
15 record.

16 THE WITNESS: 3 Loudon Lane  
17 South, Loudonville, New York 12211.

18 MR. CARSTEN: Would you  
19 please mark these.

20 IT WAS REQUESTED THE  
21 REPORTER MARK THE FOLLOWING EXHIBITS  
22 PRIOR TO THE START OF THE  
23 PROCEEDINGS:

24 (At which time, Plaintiff's  
25 Exhibit 1, United States Patent No.

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2 asking my questions from the  
3 beginning then.

4 MR. DILGER: If we're  
5 talking about generally has nothing  
6 to do with her patents, has nothing  
7 to do with the subject matter of  
8 this lawsuit, then we're wasting all  
9 our time.

10 MR. CARSTEN: Nate, are you  
11 going to allow your witness to  
12 provide an answer?

13 MR. DILGER: No. Not to  
14 that question. I won't.

15 MR. CARSTEN: To what  
16 question? I haven't asked a  
17 question, Nate.

18 MR. DILGER: If you want to  
19 talk about the subject matter of  
20 this litigation, let's do that.

21 MR. CARSTEN: Yes, Nate.  
22 I'm about to ask a question.

23 Will you permit me to ask a  
24 question?

25 MR. DILGER: Go ahead.



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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, do you have an opinion  
4 regarding the meaning of the phrase  
5 "Wherein each cup is U-shaped," as that  
6 phrase is used in the asserted patents?

7 A In my opinion, "U-shaped," in reference to  
8 the patent or --

9 Sorry. That's not what I meant to say.

10 In my opinion, "U-shaped" means an arcuate  
11 bottom with an open top having the general  
12 appearance of the shape of the letter U.

13 Q And is that your expert opinion regarding  
14 how that phrase is used with respect to  
15 the asserted patents in the present  
16 litigation?

17 A Yes.

18 Q Okay. Now, I'd like to ask you about the  
19 phrase, "open top end."

20 That is part of your definition of the  
21 phrase "Wherein each cup is U-shaped," as  
22 that phrase is used in the asserted  
23 patents in this litigation; correct?

24 A I'm sorry. Say that one more time.

25 Q Is the component, "An open top end," part

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2 of your definition of the term or phrase  
3 "Each cup is U-shaped," as it appears in  
4 the asserted patents?

5 A I say, "open top end," when I'm talking  
6 about U-shaped cups having an arcuate  
7 bottom with an open top.

8 Q And what do you mean by, "open top end"?

9 A I mean it's open.

10 Q Okay. What does it mean for a top end to  
11 be open?

12 A It's open.

13 Q What does it mean for a top end to be  
14 closed?

15 A It's closed.

16 Q Other than using the phrase, the terms,  
17 "open and closed," can you not describe  
18 for me what an open top end is versus what  
19 a closed top end is?

20 A I might have to look into that a little  
21 bit further, but an open top end means  
22 open.

23 Q What does "open" mean to you?

24 MR. DILGER: It's like  
25 asking her what "red" means.

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2 THE WITNESS: I don't -- I  
3 mean, yeah. I don't -- I don't.

4 BY MR. CARSTEN:

5 Q So, for instance, Denny's opens at 9 A.M.  
6 Does the open top end of a bra mean that  
7 it opens at 9 A.M?

8 A I'm not going to answer that. I don't  
9 know --  
10 It's ridiculous.

11 MR. DILGER: Objection.

12 It's argumentative.

13 A I mean, you are asking me --

14 Q Ms. Cavosie you're under oath.  
15 I'm asking what "open" means with respect  
16 to "open top end."

17 A It means it's open.

18 Q Open to whom?

19 A It means the top end is open.

20 Q Meaning it's not secured to the chest?

21 A I'm not answering that.

22 Q Well, Ms. Cavosie, I will get a order that  
23 you need to answer that and I will fly  
24 back up.

25 A I'm saying --

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2 MR. DILGER: You'll try, but  
3 there's a problem here.

4 MR. CARSTEN: Nate, I don't  
5 know if you need to have another  
6 conversation with your client, but  
7 when I ask a question of what open  
8 top end means with respect to an  
9 opinion that she's given that has  
10 the phrase open top end and I'm told  
11 that, "I'm not going to answer  
12 that."

13 THE WITNESS: No, that's not  
14 what I meant. I just meant that  
15 I --

16 When you asked me what  
17 "open" means, it's open. I don't  
18 know how much more I can give you.  
19 Now you're asking me something in  
20 relation to Denny's restaurant and I  
21 wouldn't even begin to tell you how  
22 I would relate something to Denny's  
23 restaurant. I don't -- I don't --

24 That's what I meant. I  
25 can't answer anything relating to

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2 Denny's restaurant.

3 BY MR. CARSTEN:

4 Q Okay. So with respect to open top end, as  
5 you've used it, with respect to the  
6 asserted patents, how would you describe  
7 "open" to somebody that's not familiar  
8 with that term?

9 A It's an open top end, meaning it's open.

10 Q Have you ever been involved in bra design,  
11 Ms. Cavosie?

12 A I'm sorry, say that one more time.

13 Q Have you ever been involved in bra design,  
14 Ms. Cavosie?

15 A Have I ever been involved in bra design?

16 Q Yes.

17 A Yes.

18 Q Have you ever worked with a manufacturer?

19 A Yes.

20 Q Okay. If you told a manufacturer, "I'd  
21 like an open top end on my bra," what  
22 would be the plain and ordinary meaning of  
23 that?

24 A Make it open.

25 Q Okay. And if the manufacturer says, "What

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2 does that mean? How do I cut the fabric?  
3 What do I construct?" how would you  
4 respond?

5 A Well, I think there's a lot of factors  
6 that would come into play there so I  
7 wouldn't be able to give you a definitive  
8 answer on that.

9 Q So "open top end" can mean a lot of  
10 different things?

11 A No. I'm saying that it would -- you're  
12 talking about cutting the fab --  
13 You were talking about cutting the fabric,  
14 but that's --  
15 I'm not sure what you mean.

16 Q Does open top end have something to do  
17 with the shape of a cup?

18 A Yeah, because we're talking about cup --  
19 the U-shaped cups that have an arcuate  
20 bottom and an open top end.

21 Q What is the structure of the cup that  
22 makes the top end open?

23 A It has an arcuate bottom and an open top  
24 end.

25 And having the general appearance of the

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2 letter U.

3 Q Could you turn to Exhibit 17?

4 A Seventeen?

5 Q Yes.

6 A I think I only have one through seven.

7 Q Have we not --

8 You're right. Here is Exhibit 17

9 (Handing).

10 MR. CARSTEN: Exhibit 17 is

11 an ad for the Intrigue bra.

12 MR. DILGER: Okay.

13 BY MR. CARSTEN:

14 Q Ms. Cavosie, I direct your attention to  
15 the picture on the upper left.

16 Is the bra that is depicted in that  
17 picture, does that --

18 MR. CARSTEN: Strike that.

19 BY MR. CARSTEN:

20 Q Does the bra that is depicted in the  
21 picture in the upper left corner of  
22 Exhibit 17 have an open top end?

23 A You talking about the photograph?

24 Q The photograph, correct.

25 THE WITNESS: You see this,

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2 Nate?

3 MR. DILGER: Yeah. Thank  
4 you.

5 THE WITNESS: Intrigue bra  
6 is not in my -- was not referenced  
7 in my Declaration, and I thought we  
8 were only speaking about what is  
9 within the Declaration.

10 MR. DILGER: Well, if you  
11 can tell from that photograph and  
12 the information that he's provided  
13 whether that's an open top end or  
14 not, go ahead and give your answer.  
15 If you need more information, then  
16 go ahead and say that. But if  
17 that's enough information to answer  
18 that question, give it your best  
19 shot, otherwise --

20 THE WITNESS: Okay.

21 A Can you ask it one more time? Sorry, I --

22 Q Sure.

23 Does the bra that's depicted in the  
24 photograph in the upper left-hand corner  
25 of Exhibit 17, in your expert opinion,



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2 have an open top end?

3 A No.

4 Q Why not?

5 A Because it's closed.

6 Q And what is it that makes it closed?

7 MR. DILGER: You can answer  
8 to the extent you can based on the  
9 information you have.

10 A Because no top portion of the breast is  
11 showing through the -- is protruding from  
12 the cup.

13 Q So does whether or not a portion of the  
14 breast protrudes from the top of the cup  
15 relate to whether or not a cup is open?

16 A Say that one more time. I'm sorry.

17 Q Does whether or not part of the breast  
18 protrudes from the upper part of a cup  
19 relate to whether or not that cup is, or  
20 has, an open top?

21 MR. DILGER: To the extent  
22 you understand the question, you can  
23 answer.

24 THE WITNESS: I'm sorry?

25 MR. DILGER: To the extent

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2 you understand the question, you can  
3 answer.

4 THE WITNESS: Okay.

5 A Say it one more time. You're going to  
6 hate me, I know it. I'm sorry.

7 Q Does the extent to which a portion of the  
8 breast protrude above the top of the bra  
9 relate to whether or not that bra cups  
10 have open top ends?

11 A Well, you said to the "top of the bra."  
12 Do you mean to the -- you said --  
13 I think you said two different things.  
14 I'm sorry.

15 Q Does whether or not a portion --

16 MR. DILGER: Eric, can  
17 you -- I'm sorry to cut you off, do  
18 you mind rereading her answer, her  
19 original answer on whether or not it  
20 was a -- why it was not an open top  
21 end? I think that's where we're  
22 getting confused.

23 MR. CARSTEN: I'm asking a  
24 question other than with respect to  
25 the Intrigue bra, so...

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2 cups?

3 A Yes.

4 Q Are the upper portions --

5 A I mean, not totally, because it's a little  
6 cut off on the --

7 Okay. Let's --

8 A If you're looking at it from the right  
9 side (Indicating).

10 Q Let's focus on the top cup.

11 Can you see the upper portions on the top  
12 cup?

13 A Only of the -- my left-hand-side cup,  
14 because this part is cut off here  
15 (Indicating).

16 Q Right. So let's focus on the lower  
17 left-hand-side cup.

18 Can you see clearly the upper portions of  
19 that cup?

20 A I can.

21 Q Are the upper portions of that cup  
22 substantially parallel, in your expert  
23 opinion?

24 A Which upper portions?

25 Q Do you understand that the phrase, "An

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2 outer side and an inner side each having  
3 substantially parallel upper portions," is  
4 a phrase that you opined on as an expert  
5 in your Declaration?

6 A Yes.

7 Q Using your understanding of that phrase,  
8 as you gave in your Declaration, are the  
9 upper portions of the inner side and the  
10 outer side of the left-hand cup in  
11 Exhibit 19 substantially parallel?

12 A I would say no.

13 MR. CARSTEN: Can we go off  
14 the record?

15 THE VIDEOGRAPHER: The time  
16 is now approximately 3:13 P.M.  
17 Going off the record.

18 (At which time, 3:13 P.M.,  
19 there was a pause in the proceedings  
20 until 3:22 P.M., at which time the  
21 proceedings resumed.)

22 THE VIDEOGRAPHER: The time  
23 is now approximately 3:22 P.M.  
24 Going back on the record.

25

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2 Q Does this have an open top end?

3 A No.

4 Q And why, in your opinion, does it not have  
5 an open top end?

6 MR. DILGER: You can  
7 answer --

8 THE WITNESS: I don't know  
9 why I'm giving opinions on products  
10 that are completely unrelated to  
11 this.

12 MR. DILGER: If you  
13 understand the question based on  
14 your review of what you're seeing  
15 just now, you can answer. But if  
16 you need more information...

17 THE WITNESS: Well, I'm just  
18 concerned because I feel it's  
19 outside of the scope of what was in  
20 my Declaration, and I was under the  
21 understanding that we were  
22 discussing only what was in the  
23 Declaration, and StayKups are not --

24 MR. CARSTEN: Let me put it  
25 this way.

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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, are you not comfortable  
4 opining as whether or not this has an open  
5 top end?

6 A No, I'm comfortable saying it. I just  
7 don't want to speak freely about something  
8 not in my Declaration when I'm here to  
9 talk about my Declaration only.

10 Q And can you explain how this does not have  
11 an open top end?

12 A Well --

13 MR. DILGER: If you  
14 understand, you can answer that  
15 question.

16 THE WITNESS: Okay.

17 MR. DILGER: If he goes  
18 further afield I think we're going  
19 to shut it down.

20 A It doesn't have an open top end because  
21 the upper portion of the breast is not  
22 exposed, and as you can see, it's curled  
23 inward. Curls inward and almost  
24 (Indicating).  
25

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2 BY MR. CARSTEN:

3 Q And almost?

4 A Period. It curves inward, period. Sorry.

5 Q So if the top portion of a cup curls  
6 inward, does that mean that it does not  
7 have an open top end?

8 A This one doesn't (Indicating).

9 Q But whether or not it curls inward doesn't  
10 relate to whether or not any other  
11 product --

12 A I'm speaking -- I'm speaking about this  
13 cup. You can see in the photos and you  
14 can see it in this, in this (Indicating).

15 Q Ms. Cavosie, I'm asking -- I'm trying to  
16 get an understanding of the terms that you  
17 opined about, one of them being open top  
18 end.

19 A Okay.

20 Q So does whether or not the cup curls  
21 inward relate to whether or not something  
22 has an open top end?

23 A Okay. I'm saying that this cup that  
24 you're asking me about is curling inward  
25 and does not have an open top end.

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2 Q Okay. Ms. Cavosie, my question is, does  
3 whether or not something --

4 MR. CARSTEN: Strike that.

5 BY MR. CARSTEN:

6 Q Does whether or not a cup have an inward  
7 curling top end affect whether or not it  
8 has an open top end?

9 MR. DILGER: Objection.

10 Asked and answered.

11 MR. CARSTEN: You may  
12 answer. He hasn't stated that you  
13 cannot answer.

14 MR. DILGER: She's already  
15 answered twice.

16 MR. CARSTEN: Nate, no, she  
17 hasn't.

18 MR. DILGER: She has. I  
19 disagree.

20 Move on. You may not like  
21 her answer, but she's answered you  
22 twice.

23 MR. CARSTEN: Can you read  
24 back the question, please?

25 MR. DILGER: Move on.



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2 (At which time, the  
3 following portion of testimony was  
4 read back by the stenographer:

5 Q Does whether or not a  
6 cup have an inward curling top end  
7 affect whether or not it has an open  
8 top end?)

9 THE WITNESS: I think I  
10 answered the question.

11 BY MR. CARSTEN:

12 Q And what is your answer?

13 MR. DILGER: Same objection  
14 if you're asking the question again.  
15 Asked and answered.

16 Move on.

17 BY MR. CARSTEN:

18 Q What is your answer?

19 THE WITNESS: Can you read  
20 me back my answer? Sorry.

21 THE REPORTER: There is no  
22 answer here. There's all  
23 objections, et cetera.

24 THE WITNESS: Before that,  
25 though. Beforehand.

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2 (At which time, the  
3 following portion of testimony was  
4 read back by the stenographer:

5 A Okay. I'm saying that  
6 this cup that you're asking me about  
7 is curling inward and does not have  
8 an open top end.)

9 BY MR. CARSTEN:

10 Q Yes. And I'm not asking --  
11 And I understand the record reflects your  
12 opinion with respect to the exhibit I put  
13 in front of you. I'm asking for your  
14 expert opinion regarding open top end in  
15 which you purport to provide an opinion in  
16 litigation against my client, and I'm  
17 asking whether or not a cup curls inward  
18 at the top relates to your definition of  
19 an open top end?

20 A That's a great question, and I think I  
21 would have to research it a little bit  
22 further to give you a proper answer.

23 Q Okay. So you don't know?

24 MR. DILGER: That's not what  
25 she just said.

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2 BY MR. CARSTEN:

3 Q Are you prepared to provide any  
4 information today regarding whether a cup  
5 that curls inward at the top relates to  
6 whether or not that cup has an open top  
7 end?

8 A Well, I think it's unfair to ask me a  
9 question that's outside the scope of the  
10 Declaration that I'm here to give a  
11 deposition on today.

12 MR. DILGER: I agree to that  
13 criticism, and to the extent you  
14 want to ask supplemental --

15 (At which time, the reporter  
16 requested clarification.)

17 MR. DILGER: To the extent  
18 you want to ask about topics outside  
19 the Declaration, I don't think  
20 that's fair or proper.

21 MR. CARSTEN: Nate, I'm  
22 sorry, are you going to remove her  
23 Declaration with respect to open top  
24 end? Is that what we're agreeing  
25 to?

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2 THE WITNESS: Okay.

3 MR. DILGER: I think we can  
4 move on then.

5 THE WITNESS: Okay.

6 A You want me do it right on this one?

7 BY MR. CARSTEN:

8 Q Sure.

9 THE WITNESS: But then am I  
10 going to being locked into some type  
11 of circle, shape?

12 MR. DILGER: You're good.  
13 You're good.

14 THE WITNESS: Okay.

15 A (Witness complied with counsel's request.)  
16 Just do that. Okay.

17 BY MR. CARSTEN:

18 Q Ms. Cavosie, what is a tangent?

19 A A tangent is a line that touches the  
20 surface of something.

21 Q What is the tangent of a straight line?

22 A What is the tangent of a straight line? A  
23 tangent is a straight line that touches  
24 the surface of something. That's my  
25 recollection of what a tangent is.

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2 Q Are there any requirements as to what a  
3 tangent is?

4 A That is a great question, and I would have  
5 to research that a little bit further to  
6 answer that properly.

7 Q Prior to this litigation, have you ever  
8 used the term "tangent line" in your line  
9 of business?

10 A I don't believe so.

11 Q Have you ever heard anyone else in the  
12 field of bra design, clothing design,  
13 undergarment design, use the phrase  
14 "tangent line"?

15 A I do not believe so.

16 Q What is your expert opinion with respect  
17 to the ordinary and customary meaning of  
18 the phrase "substantially parallel"?

19 A Substantially parallel?

20 Sorry, say that one more time. I'm sorry.

21 Q Sure. What is your expert opinion with  
22 respect to the ordinary and customary  
23 meaning of the phrase "substantially  
24 parallel"?

25 A Not fully parallel.

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2 Q And what is the opposite of parallel?

3 A The opposite of parallel?

4 Q Correct.

5 A What is the --

6 You want me to give you a definition of  
7 what the opposite of parallel is?

8 Q Do you have an understanding of what the  
9 opposite of parallel would mean?  
10 It's okay if you don't. I'm just asking  
11 you if you have an understanding.

12 A Not parallel.

13 Q Do you have an understanding of the number  
14 of degrees two lines would be if they were  
15 farthest away from parallel as possible?

16 A No.

17 Q Do you have an understanding of how close  
18 two lines need to be to parallel to be  
19 substantially parallel, as you understand  
20 that term?

21 A That is a great question. I definitely  
22 think I would have to look into that  
23 further to give you the appropriate  
24 answer.

25 Q In your expert opinion, is it possible to

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2 cup would be. In relation to this, that's  
3 how I would determine it I would say.

4 Q Okay. I'm handing to you Exhibit  
5 Number 12.

6 MR. CARSTEN: For the  
7 record, Exhibit 12 is US Patent  
8 Number 2,147,375 to Lazzari.

9 MR. DILGER: Okay. Thank  
10 you.

11 BY MR. CARSTEN:

12 Q So, Ms. Cavosie, on Figure 3 of this  
13 document --

14 A Okay.

15 Q -- how would you draw a tangent line to  
16 the outer side?

17 A Well, honestly, Eric, I would have to read  
18 this whole patent to give you an opinion  
19 on that because I have not read this.

20 Q Okay.

21 A And wouldn't want to -- wouldn't want to  
22 give you my opinion without really knowing  
23 the context of what's in this patent.

24 Q So in terms of drawing a tangent line with  
25 respect to the upper portion of the outer

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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, let me hand you Exhibit  
4 Number 14 (Handing).

5 A (Witness receiving document.)

6 MR. CARSTEN: For the  
7 record, Exhibit Number 14 is US  
8 Patent Number 3,204,638.

9 MR. DILGER: Okay. Thank  
10 you.

11 THE WITNESS: Do you need  
12 the number?

13 MR. DILGER: No. I've got  
14 it. Thank you.

15 BY MR. CARSTEN:

16 Q Ms. Cavosie, I'd like you to look at  
17 Figure 3 on the front.

18 A (Witness complied with counsel's request.)  
19 Okay.

20 Q Do you see the line in the middle of the  
21 bra, the --

22 MR. CARSTEN: Strike that.

23 BY MR. CARSTEN:

24 Q Do you see the vertical line or set of  
25 three lines in the middle of the bra?



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2 A Can you give me a number reference?

3 Q Yes. For instance, Number 72, I think, is  
4 the absolute inner line.

5 Do you see 72?

6 A Uh-huh.

7 Eric, can I just stop you real quick?

8 Q Sure.

9 A I have never seen this patent before ever  
10 in my life.

11 Q I'm only going to ask you about Figure  
12 Number 3.

13 A But I don't feel comfortable answering  
14 questions about it because I haven't read  
15 it in its entirety and would like to if  
16 I'm going to give an opinion on anything  
17 related to this.

18 Q Okay. I'm going to ask you one question  
19 with respect to two lines, and if you  
20 don't feel comfortable, that's fine, and  
21 you can state that on the record.

22 Let me ask you the question and you can  
23 tell me whether or not you feel  
24 comfortable answering it.

25 A Okay.

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2 Q The question is solely, with respect to  
3 line 72, the vertical line in the middle  
4 of this bra, and 66, which is a strip,  
5 let's call it, at an angle from the  
6 center, vertical line 72, is it your  
7 expert opinion that those two lines, or  
8 tangent lines drawn from those two  
9 straight lines, would be substantially  
10 parallel, according to the plain and  
11 ordinary definition as you understood and  
12 discussed in your Declaration?

13 A I feel uncomfortable answering that  
14 question only because I have never ever  
15 seen this patent before in my life or read  
16 it or understand anything about the  
17 diagrams, the descriptions, any of it, so  
18 I do feel uncomfortable answering that  
19 question because I don't know the contents  
20 of what are within this patent  
21 (Indicating).

22 Q Okay. If I were to draw two lines on a  
23 blank piece of paper, would you feel  
24 comfortable opining as to whether or not  
25 those two lines were substantially

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2 parallel, as you used that term in your  
3 Declaration, with respect to the plain and  
4 ordinary meaning --

5 A Well, no --

6 Q -- as applied in your asserted patents?

7 A I wouldn't feel comfortable because we're  
8 not relating it to bras or cups or  
9 cup-shaped or designs or anything like  
10 that. I mean, just putting random lines  
11 on a page, I wouldn't feel comfortable  
12 assessing that.

13 Q Okay. I'm handing you Exhibit Number 13.

14 MR. CARSTEN: And

15 Exhibit Number 13 is US Patent

16 Number 2,079,426 to Schottenfels.

17 MR. DILGER: 2,079,426?

18 MR. CARSTEN: That's

19 correct.

20 MR. DILGER: Okay. Thank

21 you.

22 BY MR. CARSTEN:

23 Q Okay?

24 A Okay.

25 Q Do you recognize this patent?

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2 A I do.

3 Q Have you ever read this patent before?

4 A A long time ago; yes, I have.

5 Q Okay. I'd like you to turn to the second  
6 page and take a look at Figure 10.

7 A Okay.

8 Q Are the inner and outer --

9 MR. CARSTEN: Strike that.

10 BY MR. CARSTEN:

11 Q Are the upper portions of the inner and  
12 outer sides of the cups of this bra, as  
13 depicted in Figure 10, substantially  
14 parallel?

15 A I feel uncomfortable asking -- answering  
16 that question because I have not read this  
17 patent in years, and until I did read it  
18 and know the ins and outs of every single  
19 diagram, portion, figure of this patent, I  
20 would feel uncomfortable answering that  
21 question.

22 Q Ms. Cavosie, your Declaration states that  
23 you reviewed the file histories of your  
24 patents; is that correct?

25 A I did review it, uh-huh.

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2 Q And did you review those in preparation  
3 for your Declaration?

4 A I did.

5 But I can't recall every detail that's in  
6 every single one of these very detailed  
7 and elaborate patents, and everything  
8 single one of the --

9 There's a lot of -- there's a lot of  
10 diagrams and descriptions here, and I  
11 wouldn't feel comfortable being able to  
12 recollect every single, you know, number  
13 illustrating, you know, a feature of this  
14 bra and be accurate in doing that when I  
15 can't -- I cannot just call out by name  
16 Oh, yes, 24 is such and such. I can't do  
17 that.

18 Q Okay.

19 A But I did review everything in preparation  
20 for this.

21 Q Okay. Well, this patent's only two pages  
22 long, so why don't we go off the record  
23 and I'd like you to take a minute.  
24 I would like to ask --

25 A Even if I read it right now, I don't -- I

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2 would want to digest it, think about it  
3 before I gave you an opinion on  
4 specifically something you're asking me  
5 about.

6 So I don't think even if I read it right  
7 now I would be able to give you something  
8 without putting some serious thought  
9 behind it.

10 Q That's even with respect to the question  
11 of whether or not the upper portions of  
12 the inner and outer sides of the cups of  
13 the bra depicted in Figure 10 are  
14 substantially parallel?

15 A Well, there's a whole host of issues, in  
16 my opinion, with that figure, so I -- I  
17 don't -- one hundred per cent would not  
18 feel comfortable answering that question.

19 Q What do you recall of the prosecution  
20 history of your patents?

21 A All 500 pages of it?

22 Q No. Do you recall anything whatsoever?

23 A I mean, really?

24 Q Yes.

25 MR. DILGER: Objection.

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2 Argumentative.

3 No, I -- I -- other than --

4 other than --

5 A That's a lot of pages to recall detail.

6 BY MR. CARSTEN:

7 Q Do you recall anything substantive from  
8 the prosecution histories?

9 A There's so much in there, Eric, I just  
10 can't plunk something out, you know.

11 Q Do you recall any rejections that any of  
12 your patents received?

13 A I do recall that there were rejections;  
14 what they specifically are, I couldn't  
15 tell you verbatim out of this thing right  
16 now (Indicating).

17 Q I'm not asking for verbatim. I'm asking  
18 if you have any recollection of anything  
19 you took away from your review of the  
20 prosecution histories.

21 A I have a recollection that there were  
22 rejections. What they were, I can't  
23 specifically cite right now unless I sat  
24 down and read each and every page and word  
25 of the prosecution history.

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2 Q So, sitting here today, you don't have an  
3 understanding with respect to how your  
4 patents differ from the prior art as  
5 reflected in -- at least that's with  
6 respect to the prosecution histories; is  
7 that accurate?

8 MR. DILGER: I'm going to  
9 instruct you not to answer that.  
10 That is beyond the scope of the  
11 Declaration and the reason for what  
12 she's being provided today to  
13 provide testimony.

14 BY MR. CARSTEN:

15 Q Let's go back to your Declaration.  
16 Let's turn back to Exhibit Number 5.

17 A You would like me to look at my  
18 Declaration?

19 Q Yes. Yes, please.  
20 I'm sorry, yes. I wasn't clear. I would  
21 like you to take a look at Exhibit  
22 Number 5.  
23 Thank you for asking to clarify.

24 A Okay.

25 MR. DILGER: Eric, since



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2 we're moving to a new topic, can I  
3 have five minutes for a bathroom  
4 break?

5 MR. CARSTEN: Actually, I  
6 was just -- wanted to finish off  
7 but, you know what, you're not the  
8 first -- it's fine. The court  
9 reporter --

10 Let's take a break.

11 THE VIDEOGRAPHER: Time is  
12 now approximately 4:27 P.M. Going  
13 off the record.

14 (At which time, 4:27 P.M.,  
15 there was a pause in the proceedings  
16 until 4:37 P.M., at which time the  
17 proceedings resumed.)

18 THE VIDEOGRAPHER: The time  
19 is now approximately 4:37 P.M.  
20 Going back on the record with Disk  
21 Number 2 of the deposition of Tara  
22 Cavosie.

23 BY MR. CARSTEN:

24 Q Ms. Cavosie, let's turn back to Exhibit  
25 Number 6. I think you have a copy of

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2 you.

3 BY MR. CARSTEN:

4 Q And, Ms. Cavosie, I again want to quickly  
5 go back over something that we were  
6 discussing earlier with respect to open  
7 top end.

8 A Okay.

9 Q Looking at Figure 1, in your expert  
10 opinion, does the undergarment that is  
11 shown in Figure 1 reflect an open top end?

12 A Well, Eric, I have never seen this patent  
13 before ever until today, and in order to  
14 really give you my best opinion, I would  
15 have to read this entire patent.

16 Q So if you --

17 A So I would feel uncomfortable giving you  
18 an answer because I have not read this and  
19 I don't understand the contents of what  
20 are within the claims and the body of this  
21 patent.

22 Q Okay. Let me clarify, make sure that you  
23 understand that I'm asking solely about  
24 Figure 1. I'm not asking about the  
25 patents, the invention, or any of the

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2 claims.

3 A Okay.

4 Q Just with respect to the undergarments  
5 that are shown in Figure 1, in your expert  
6 opinion, would this undergarment reflect  
7 an open top end?

8 A An open top end what?

9 Q Do the cups of the undergarment in Figure  
10 1 have open top ends?

11 A They don't look like cups to me.

12 Q So with respect to --

13 MR. CARSTEN: Strike that.

14 BY MR. CARSTEN:

15 Q In your Declaration, you state that  
16 certain bras are covered by your patents;  
17 correct?

18 A Can I look at it myself, or no?

19 Q Sure, sure, sure. You may look. It's  
20 Paragraph 10, for instance.

21 A Paragraph 10 of?

22 Q Your Declaration.

23 A My Declaration.

24 (At which time, there was a  
25 brief pause in the proceedings.)

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2 A Are you sure I'm looking at ten, Page 2,  
3 Number 10?

4 Q Correct.

5 A Do you want to read it?

6 Q READING FROM DOCUMENT:

7 Since then, Ce Soir has introduced two new  
8 backless strapless bras covered by the  
9 patents into the marketplace - the Super  
10 Boost and the Body Sculpting.

11 A Okay. What are you asking me about that?

12 Q In Paragraph 10 you state that those bras  
13 are covered by your patents; correct?

14 A The Super Boost and the Body Sculpting?

15 Q Correct.

16 A You are asking me if my patents are  
17 covered -- if the bras Super Boost and  
18 Body Sculpting is covered under my  
19 patents?

20 Q I'm asking you to confirm that in your  
21 Declaration you state that those two Ce  
22 Soir bras are covered by your patents?

23 A I do state that in the Declaration.

24 Q Okay. So you are familiar with applying  
25 your patents to products; correct?

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2 A Yes. But we're specifically talking about  
3 her infringing products.

4 Q Okay.

5 A If I were to relate this patent to my --

6 Q I'm not --

7 A -- I would not be familiar with it.

8 Q Let me clarify again. I'm not asking  
9 about this patent or the claims. I'm  
10 looking at Figure 1, which just shows an  
11 undergarment.

12 And would you, if you saw this in the  
13 marketplace, going through the checklist  
14 in your mind of your patents, would you  
15 say that this satisfies having an open top  
16 end?

17 MR. DILGER: This has been  
18 asked and answered, Eric.

19 MR. CARSTEN: It has not  
20 with respect to this, and I'm still  
21 trying to understand her use of  
22 "open top end." This is a fair  
23 question.

24 MR. DILGER: It's not.  
25 You're asking her about a document

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2 that she hasn't reviewed and she  
3 wants to review and give an answer.  
4 You may not like her answer --

5 MR. CARSTEN: There's  
6 nothing -- there's nothing --

7 Nate, there's nothing in the  
8 document with respect to this  
9 figure. If she saw this figure in  
10 the marketplace, there would not  
11 being a document behind it. I'm  
12 just asking from this figure can she  
13 determine whether or not these have  
14 top ends. If she cannot, she can  
15 state that and we can move on.

16 A I can't determine anything because I  
17 would --  
18 I would never ever presume to determine  
19 anything without understanding the  
20 contents of what are within the patent and  
21 the claims and understanding and fully  
22 understanding the illustrations of  
23 every -- each and every point of this bra  
24 or this garment or article. I don't even  
25 know if it's a bra. You can't tell from

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2 the pictures what it is (Indicating).  
3 Like I said, I would have to read it to  
4 really understand what it is.

5 Q Ms. Cavosie, can you look at Exhibit  
6 Number 18, please?

7 A Do I have it?

8 Q Here you go (Handing).

9 MR. CARSTEN: For the  
10 record, Exhibit 18 is US Patent  
11 Design Patent Number 419,279.

12 MR. DILGER: 419,279. Is  
13 there -- it looks like you skipped  
14 16. Is that intentional?

15 MR. CARSTEN: Not  
16 dramatically.

17 MR. DILGER: I mean, I just  
18 want to make sure I haven't missed  
19 it.

20 MR. CARSTEN: You haven't  
21 missed it. I haven't used it yet.

22 MR. DILGER: Okay. Thank  
23 you.

24 MR. CARSTEN: Do you have  
25 Exhibit 18, Nate?

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2 MR. DILGER: Give me one  
3 second here.

4 I think I do.

5 (At which time, there was a  
6 brief pause in the proceedings.)

7 MR. DILGER: I don't.

8 MR. CARSTEN: No, it's a  
9 design patent, US design patent.

10 MR. DILGER: Yeah, I don't  
11 think I --maybe I --give me one  
12 minute here.

13 MR. CARSTEN: We produced  
14 it. I can give you a Bates number  
15 if that's easy.

16 MR. DILGER: No, that  
17 doesn't help. Just give me one  
18 second here.

19 MR. CARSTEN: Okay.

20 MR. DILGER: I think I might  
21 be able to fix this.

22 (At which time, there was a  
23 brief pause in the proceedings.)

24 MR. DILGER: Okay. I think  
25 I got it.



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2 MR. CARSTEN: Okay.

3 MR. DILGER: It is -- looks  
4 like, Marco, David; David Marco.

5 MR. CARSTEN: That's right.

6 MR. DILGER: Okay. I think  
7 I got it.

8 BY MR. CARSTEN:

9 Q So Exhibit 18 is a design patent, US  
10 Design Patent 419,279.

11 A Uh-huh.

12 Q Ms. Cavosie, have you had a chance to  
13 review this patent?

14 A No.

15 Q Can you do so now?

16 A Like, read the whole thing now?

17 Q Sure.

18 A Really?

19 Q Yes. It's a design patent.

20 A Okay.

21 (At which time, there was a  
22 brief pause in the proceedings.)

23 A Okay.

24 Q Okay. I'll direct your attention to  
25 Figure 1.

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2 A Okay.

3 Q In your expert opinion, Ms. Cavosie, does  
4 the bra depicted in Figure 1 have an  
5 arcuate bottom end?

6 MR. CARSTEN: Strike that.

7 BY MR. CARSTEN:

8 Q In your expert opinion, do the cups of the  
9 bra in Figure 1 have arcuate bottom ends?

10 A I would say so, yeah.

11 Q In your expert opinion, do the cups of the  
12 bra depicted in Figure 1 have open top  
13 ends?

14 A Well, it's hard to say, and I'll tell you  
15 why.

16 Because they illustrate no breasts on the  
17 model, so it's hard to say where this  
18 product is to be placed (Indicating).

19 Q And if a portion of the breast could be  
20 shown while the bra is placed in its  
21 proper position, would it have an open top  
22 end?

23 A I think that would be just me speculating,  
24 right, because how could I give an  
25 accurate answer without seeing the breasts

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2 in relation to the bra?

3 Q What would you look for with respect to  
4 the breasts in relation to the bra?

5 A Well, you're asking me to conjure up an  
6 opinion -- to conjure up an opinion of  
7 something that doesn't exist. I can't do  
8 that.

9 I would need to see the breasts and the  
10 bra illustrated on the breasts, and there  
11 is no such thing so I can't answer that  
12 question accurately.

13 Q Okay. Now, with respect to Figure 1 of  
14 Exhibit 15 that I showed you a few minutes  
15 ago.

16 A Figure 1 of exhibit -- this one?

17 MR. DILGER: Which exhibit  
18 are you on, Eric?

19 MR. CARSTEN: I'm going to  
20 go back to Exhibit 15 for a second.

21 THE WITNESS: This one, Nate  
22 (Indicating).

23 MR. DILGER: Okay. Thank  
24 you.

25

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2 BY MR. CARSTEN:

3 Q Now Figure 1, do you see breasts in Figure  
4 1?

5 A I do.

6 Q Do you see where the cups or the material  
7 hit the breasts with respect to Figure 1?

8 A Again, I feel uncomfortable answering  
9 questions about this particular patent  
10 494,397, because I have never seen it  
11 before in my life; I have never read the  
12 contents that are within this patent; and  
13 I couldn't accurately give you an opinion  
14 until I was completely informed of the  
15 specifics of this patent.

16 Q So even though I've tried to make clear  
17 that I'm not asking about the specifics of  
18 the patent, just talking about the image,  
19 Figure 1, you do not feel comfortable  
20 opining as to whether that's showing open  
21 top end cups; correct?

22 A Just looking at Figure 1?

23 Q Correct.

24 A These do not look like cups to me so I  
25 can't answer that question (Indicating).

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2 Are you talking about --

3 Sorry. Did you just ask me about open  
4 top?

5 I'm sorry, can you ask that question  
6 again?

7 Q In just Figure 1, just the image of  
8 Exhibit 15, if we call what is labeled as  
9 B, cups, in your opinion, do those cups  
10 have open top ends?

11 A Well, you're asking me to give an opinion  
12 on whether or not they are cups and I  
13 don't know if they are or they aren't. I  
14 haven't read the patent.

15 Q Let me, again, read back my question.  
16 I'd like you to assume --

17 A I think that's -- I think that's unfair to  
18 ask me to assume.

19 MR. DILGER: That question  
20 calls for speculation.

21 BY MR. CARSTEN:

22 Q Ms. Cavosie, you're holding yourself out  
23 as an expert in this matter; correct?

24 A I am, but you're asking me to assume that  
25 something on a patent is something else

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2 when it may not be by reading the patent,  
3 so I think that's an unfair question to  
4 ask me.

5 Q Ms. Cavosie, I have stated on the record,  
6 which is being transcribed and videotaped,  
7 multiple times I am not asking you about  
8 the patent or the claims or anything to do  
9 with Patent Number 494,397. I'm simply  
10 using Figure 1 --

11 A Uh-huh.

12 Q -- which has an illustration of a garment.

13 A Uh-huh.

14 Q And we've talked about open top end today,  
15 and when we were just discussing  
16 Exhibit 18, you said that you could not  
17 opine as to whether or not the bra,  
18 Exhibit 18, is open top end because you do  
19 not have the picture of the breasts and  
20 where the bra was hitting the breasts.

21 A Right.

22 Q So I'm going back and showing you a  
23 picture where an undergarment is hitting  
24 the breasts and trying to understand your  
25 definition of open top end as it relates

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2 to your asserted patents, and I'd like to  
3 know your opinion, if you have one, if --

4 A But I told you, I cannot give you an  
5 opinion on a patent that I have not read  
6 and have seen for the first time right  
7 this very minute. I cannot give you an  
8 opinion on that.

9 Q You cannot give an opinion with respect to  
10 the Figure Number 1, which is what I'm  
11 asking you about; correct?

12 A I can't give you an opinion on anything  
13 related to Patent Number 494,397 because I  
14 have not read it and I am seeing it for  
15 the very first time right now and I do not  
16 know the details within this patent, the  
17 claims of this patent. I would need to  
18 review it, think about it, and then give  
19 you an appropriate opinion, which I don't  
20 think I can do right now on the fly seeing  
21 this for the very first time.

22 Q Okay.

23 A I think it's unfair to ask me do that.

24 Q So Exhibit Number 18 you do feel  
25 comfortable on the fly giving an opinion

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2 as to an arcuate bottom end on Figure 1;  
3 correct?

4 A I would say that that's fair to say that,  
5 yeah.

6 Q But you are not comfortable giving an  
7 opinion with respect to whether or not it  
8 has an open top end; correct?

9 A Well, I did -- I --  
10 Correct. Because there are no breasts  
11 present in the illustration. So how do we  
12 know where the bra would be positioned or  
13 not positioned or where it would fall on  
14 the body of the wearer? It's -- it's  
15 like --  
16 It's kind of a crazy question, because no  
17 breasts exists on this illustration  
18 (Indicating).

19 Q So if the illustration from Exhibit 15 was  
20 in Exhibit 18, you'd be comfortable  
21 because there were no words surrounding  
22 that?

23 A I think that's a ridiculous question. I'm  
24 telling --  
25 No, that's not what I'm saying. What I'm



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2 saying is, I can't give you an opinion on  
3 Patent Number 494,397 because I have not  
4 read it; seeing it for the first time  
5 today.

6 Q Again, I never asked about your opinion  
7 with respect to the patent. I'm solely  
8 asking about the figure.

9 Figure 1 in Exhibit 15 --

10 A I don't even know what Figure 1 is because  
11 I haven't read the patent.

12 Q Okay. You are comfortable with Figure 1  
13 of Exhibit 18 being a bra; correct?

14 A Well --

15 MR. DILGER: I'm sorry,  
16 what's the question again? I missed  
17 it.

18 MR. CARSTEN: That she's  
19 comfortable with Figure 1 of Exhibit  
20 18 being a bra.

21 (At which time, there was a  
22 brief pause in the proceedings.)

23 A I'm not comfortable saying that. They  
24 refer to it as that, but they're also  
25 saying that the --

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2 I'm going to read --

3 I'm going to read the description Figure  
4 1.

5 READING FROM DOCUMENT:

6 Perspective view of the present invention  
7 depicted on a model and adhered thereon by  
8 tape (the model and tape being formed in  
9 phantom lines and forming no part of the  
10 design);

11 So I don't know what that is. It doesn't  
12 give an example of does it -- is it a  
13 breast pad? Is it a nipple cover? Is it  
14 a pad? Is it a -- there's no description.  
15 So I would merely be speculating as to say  
16 what it is or it isn't, and I would feel  
17 uncomfortable answering what it actually  
18 is because they are showing things in the  
19 illustration and then in the description  
20 saying those things don't exist.

21 Q So, in your opinion, the garment depicted  
22 in Figure 1 of Exhibit 18, you can't  
23 determine whether or not that has cups  
24 that have an arcuate bottom end?

25 A It looks like there's something, a garment

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2 of some sort that has an arcuate bottom.

3 Q Do you have an opinion, one way or  
4 another, as to whether or not those are  
5 cups that have an arcuate bottom end?

6 A They don't describe --  
7 Patent Number Design 419,279 does not  
8 describe it as cups.

9 Q Okay. So, again, my question was, do you  
10 have an opinion, one way or another, as to  
11 whether or not those are cups?

12 MR. DILGER: Asked and  
13 answered.

14 BY MR. CARSTEN:

15 Q You may answer.

16 A Nate just said "asked and answered."

17 Q That's an objection. It's noted on the  
18 record.

19 MR. DILGER: If he wants to  
20 hear your answer again, I guess --

21 A Patent Number Design 419,279 does not  
22 describe anywhere using the word "cup."  
23 That's somewhat similar to what I said the  
24 last time, right?

25 Q It is.

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2 And let me ask my question again, because  
3 here's my question: Is it your opinion  
4 that cups are depicted in Figure 1?

5 Your expert opinion. You're an expert.

6 You purport to be an expert on bras.

7 I'm just asking your opinion. Not what  
8 the document says, what the inventor says  
9 about the bra, just your opinion.

10 And if you don't have an opinion, you can  
11 state so on the record.

12 A I don't have an opinion.

13 Q Thank you.

14 Let's move back to Exhibit Number 2, your  
15 Patent Number -- the 952 patent.

16 A Okay. 6,257,952?

17 Q Correct.

18 You are comfortable opining on this  
19 patent, discussing this patent?

20 A Sure.

21 MR. DILGER: Related to her  
22 Declaration, yes.

23 BY MR. CARSTEN:

24 Q So, Ms. Cavosie, where in the '952 patent  
25 do you illustrate where the bra hits the

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2 to Nate because I do have just a very two  
3 second question for him.

4 MR. CARSTEN: Sure.

5 Off the record.

6 THE VIDEOGRAPHER: Time is  
7 now approximately 5:08 P.M. Going  
8 off the record.

9 (At which time, 5:08 P.M.,  
10 there was a pause in the proceedings  
11 until 5:10 P.M., at which time the  
12 proceedings resumed.)

13 THE VIDEOGRAPHER: Is  
14 everybody ready?

15 MR. CARSTEN: Yes.

16 THE WITNESS: Yes.

17 MR. DILGER: Eric, we need  
18 to wrap this up in about ten  
19 minutes.

20 THE VIDEOGRAPHER: The time  
21 is now --

22 MR. DILGER: We need to wrap  
23 it up in about ten minutes because I  
24 can't stay on after that point.

25 THE WITNESS: The

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2 videographer is talking. Hang on  
3 one second.

4 MR. DILGER: My apologies.

5 THE VIDEOGRAPHER: The time  
6 is now approximately 5:10 P.M.

7 Going back on the record.

8 BY MR. CARSTEN:

9 Q Okay. Ms. Cavosie, we took a break for  
10 you to speak to your attorney.

11 A Yes.

12 Q Do you need to change any of your  
13 testimony?

14 A No, no. Can you just ask of me that last  
15 question one more time?

16 Q Answer?

17 A Ask me that last question, because I --

18 MR. DILGER: I think it was  
19 about an open bottom end, Eric.

20 MR. CARSTEN: Okay.

21 BY MR. CARSTEN:

22 Q In your opinion, is it possible for a  
23 U-shaped cup to have a closed bottom end?

24 MR. CARSTEN: Strike that.

25

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2 BY MR. CARSTEN:

3 Q In your opinion, is it possible for a  
4 U-shaped cup to have an open bottom end?

5 A I may be just being a huge pain right now,  
6 but that's not the question you asked me.  
7 You asked me if I had ever seen a bra with  
8 an open bottom end ever exist or does it  
9 exist, or are you now not asking me that  
10 question?

11 Q Are you able to answer the question I just  
12 asked?

13 A Which one? I'm sorry.

14 Q In your opinion, is it possible for a  
15 U-shaped cup to have an open bottom end?

16 A Well, obviously it is impossible for me to  
17 have seen every bra that ever existed in  
18 the world of bras.

19 So, does one exist? Could one exist? I  
20 wouldn't even begin to speculate on that.

21 Q Is it possible for a cup which, in your  
22 opinion, is U-shaped, to have a closed top  
23 end and still be U-shaped?

24 A Is it my opinion --  
25 I'm just going to say it back to you.

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2 Is it my opinion that a bra that is -- a  
3 cup that is U-shaped can have a top  
4 portion that is closed, is that what  
5 you're asking me?

6 Q Correct.

7 A Yes, I think that's possible.

8 MR. CARSTEN: Let's go off  
9 the record.

10 THE VIDEOGRAPHER: The time  
11 is now approximately 5:12 P.M.  
12 Going off the record.

13 (At which time, 5:12 P.M.,  
14 there was a pause in the proceedings  
15 until 5:15 P.M., at which time the  
16 proceedings resumed.)

17 THE VIDEOGRAPHER: The time  
18 is now approximately 5:15 P.M.  
19 Going back on the record.

20 BY MR. CARSTEN:

21 Q Ms. Cavosie, can you turn to your exhibit  
22 again, your Declaration again?  
23 Can you call that up again and take a look  
24 at that?

25 A Exhibit 5?



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2 opinions that you are giving with respect  
3 to claim construction in this matter?

4 A Yes.

5 Q We marked two other exhibits. I'd like to  
6 put that in front of you very briefly.  
7 Exhibit 11 (Handing).

8 MR. CARSTEN: Exhibit 11 is  
9 Patent Number 2,869,553.

10 MR. DILGER: 2,869,553?

11 MR. CARSTEN: Correct.

12 MR. DILGER: Thank you.

13 A Okay.

14 BY MR. CARSTEN:

15 Q I take it, Ms. Cavosie, you have not seen  
16 this patent before?

17 A I have not.

18 Q Looking solely at the figures on the first  
19 page, are you comfortable opining that the  
20 device that is attached to the breast of  
21 the user in Figure 4 has an arcuate bottom  
22 portion?

23 A Well, I cannot give you an opinion on that  
24 because this figure, in Figure 4, is, you  
25 know, askew and I can't see the outer side

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2 of the right hand of the models, the outer  
3 portion of the cup or the bottom portion  
4 on that side, so I could not --

5 In addition to that, I have never seen  
6 this, I have never read the contents of  
7 this patent, so I would feel uncomfortable  
8 giving you an opinion based on this Patent  
9 Number 2,869,553.

10 Q Okay. With respect to the cup that is  
11 adhered to the left breast of the wearer  
12 in Figure 4, are you comfortable opining  
13 as to whether or not that device has an  
14 arcuate bottom end?

15 A I cannot see the inner portion of the  
16 left-hand cup, but it would be fair to say  
17 it does have --  
18 Did you ask me if it had an arcuate  
19 bottom?

20 Q I asked if you would be comfortable  
21 opining on that, whether it had an arcuate  
22 bottom?

23 A I would. Without reading it and without  
24 knowing the ins and outs of this patent or  
25 the specific details of the patent, the

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2 illustrations of the patent or the claims  
3 of the patent, I would say, just looking  
4 at it, the left cup in Figure 4 does seem  
5 to have an arcuate bottom (Indicating).

6 Q And, to confirm, I'm solely asking about  
7 the figure, not about the patent, the  
8 claims, or the specifications, just the  
9 figure as it appears.

10 A Uh-huh.

11 Q Same question, just as the figure appears  
12 with respect to the left cup, do you feel  
13 comfortable, opining as an expert, as to  
14 whether or not that cup has an open top  
15 end?

16 MR. DILGER: I don't think  
17 we've established that it's a cup.

18 A No, I wouldn't feel comfortable answering  
19 that because there's a lot of stuff going  
20 on on the top --  
21 There's a lot going on and I would want to  
22 know the details of each and every thing  
23 before I would answer that question.  
24 So, no, I don't feel comfortable answering  
25 that question without reading the

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2 specifics.

3 Q So with respect to the simply the shape of  
4 the article that is adhered to the left  
5 breast and the curves of the breast  
6 indicated in the figure, based on that,  
7 you are not comfortable opining as to  
8 whether or not it has an open top end;  
9 correct?

10 A I am uncomfortable answering that question  
11 until I read this patent thoroughly and  
12 have time to, kind of, digest it and  
13 thoughtfully give you an answer.

14 Q Okay. Let's turn to Exhibit 16.

15 MR. DILGER: Hey, Eric, I  
16 really do have to wrap this up.

17 MR. CARSTEN: This is the  
18 last one, Nate.

19 MR. DILGER: Okay. Thank  
20 you.

21 THE WITNESS: Nate, right  
22 there, see it?

23 MR. DILGER: 2,061,238?

24 THE WITNESS: Yes.

25 MR. DILGER: Okay.

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2 MR. CARSTEN: Exhibit 16 is  
3 US Patent number 2,061,238.

4 A Yes.

5 BY MR. CARSTEN:

6 Q With respect to Exhibit 16, Ms. Cavosie,  
7 again, I'm asking you solely with respect  
8 to the figures that appear on the first  
9 page, not with respect to the patent, any  
10 claims of the patent, any specification.  
11 Interpreting the figures that you see, as  
12 an expert in the field, of the device that  
13 is adhered to the user in Figure 1 and you  
14 can see it unadhered in Figure 2.

15 In your expert opinion, does it appear  
16 that the cups of the device in figures 1  
17 and 2 have arcuate or rounded bottom ends?

18 A Again, I'm going to tell you that I have  
19 never before seen Patent Number 2,061,238.  
20 This is the first time I've ever seen it.  
21 I have not had an opportunity to read it.  
22 I do not know the ins and out of this  
23 patent or any of the details of the patent  
24 or the claims, and I feel uncomfortable  
25 answering any questions about it.

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2 Q Okay. So just with respect to the figures  
3 that appear on 1 and 2 --

4 A Uh-huh.

5 Q -- you do not feel comfortable, as an  
6 expert, characterizing whether those  
7 figures, just on their own, not with  
8 respect to the patent, depict cups with  
9 rounded bottom ends; correct?

10 A I would --

11 Well, you're saying a different word now.

12 Q I'm saying that you do not feel  
13 comfortable opining; correct?

14 A I do not feel comfortable giving an  
15 opinion on something that I know -- that I  
16 don't know anything about. I would have  
17 to read the body of this patent and the  
18 claims of this patent in order to be able  
19 to give you the appropriate answer about  
20 the specifics of this patent.

21 Q Okay. Looking at figures 1 and 2, can you  
22 come to a conclusion as to whether or not  
23 the cups of this garment are U-shaped?

24 A I wouldn't give that opinion because I  
25 haven't read this patent.

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2 Q And, to be clear, solely with respect to  
3 just the figures?

4 A Right.

5 Q Can you --

6 A But the figures are part of it all,  
7 though. The figures are part of the  
8 description and part of the claims and all  
9 of it is connected and I wouldn't feel  
10 comfortable giving you an opinion on  
11 something that I am not completely  
12 informed of; that I don't understand the  
13 content of it inside and out; and until I  
14 did that, digested it, understood it and  
15 thoughtfully considered it, I wouldn't  
16 being able to give you an answer about  
17 this patent.

18 Q Again, I'm not asking about this patent  
19 and --

20 A Then I shouldn't look at this then?

21 Q No. I'm asking about the figures.  
22 And if you saw these figures in an  
23 advertisement -- and I'm asking a  
24 hypothetical, but you are purporting to be  
25 an expert.

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2 A Uh-huh.

3 Q Okay. So I'm asking you to apply your  
4 expert knowledge.

5 A Right.

6 Q If you saw these figures in Marie  
7 Claire --

8 A Okay.

9 Q -- would you, based on these figures,  
10 conclude that these cups, if they are  
11 cups -- tell me if you don't think they  
12 are cups -- are U-shaped?

13 A I --

14 MR. DILGER: Objection.

15 Hold on.

16 Objection. Calls for  
17 speculation, asked and answered.

18 Go ahead. You can answer if  
19 you want.

20 THE WITNESS: Okay. I'll  
21 just tell him again: It's hard to  
22 determine without reading this what  
23 this is. Again, there are no  
24 breasts depicted in this  
25 illustration, so how am I to



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2 determine what this is, how it fits  
3 the body, what the shape of anything  
4 is if there are no breasts? I  
5 just...

6 BY MR. CARSTEN:

7 Q Sitting here today, you are unable to give  
8 an opinion as to whether or not figures 1  
9 and 2 depict a garment with U-shaped cups;  
10 is that fair?

11 A Is it a cup? Is it not a cup? Where does  
12 it fall on the breast? I don't know.  
13 You can't tell because no breast exists in  
14 this illustration, so is this meant to  
15 cover the breast? Is it not meant to  
16 cover the breast?  
17 I don't know, because one, there are no  
18 breasts depicted in Figure 1. There --  
19 and I haven't read the details within this  
20 patent, the body of it, the claims of it,  
21 understanding the figures, so I can't give  
22 you an opinion.  
23 But just off the fly, without reading it,  
24 there are no breasts there, so I can't  
25 determine --

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2 Is it a belt? Is it a -- a -- a -- I  
3 don't know. I don't know.

4 Q Okay.

5 A It doesn't explain it here and I haven't  
6 read it, so I can't give you my best  
7 opinion with thought and, and -- and --  
8 you know, applying my expertise to this  
9 because I haven't read it.

10 Q Okay. I'm going to ask what I think is --

11 MR. CARSTEN: Strike that.

12 MR. DILGER: Eric, I've got  
13 to go.

14 MR. CARSTEN: Well, I'm  
15 going to finish this line of  
16 questioning, Nate. I'm sorry. If  
17 you'd like to pause and get one of  
18 your colleagues.

19 I flew out here. You did  
20 not say it had to end at five. We  
21 started at two.

22 MR. DILGER: You keep asking  
23 the same question over and over.

24 MR. CARSTEN: Nate, I'm  
25 going to get an answer to this

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2 question. As a courtesy, I'm happy  
3 to pause so you can get one of your  
4 colleagues.

5 We spent significant time to  
6 arrange for you to have video  
7 access, which I wasn't informed that  
8 you were expecting until a half an  
9 hour, an hour before the deposition.

10 MR. DILGER: Look at your  
11 e-mail.

12 MR. CARSTEN: Yes. It was  
13 an hour or two before the deposition  
14 today.

15 MR. DILGER: Look at your  
16 e-mail. When they provided us, we  
17 made clear it was going to be a  
18 telephonic.

19 MR. CARSTEN: I'm going to  
20 ask this question. As a courtesy,  
21 I'm happy to pause so you can grab  
22 Pete or Kainoa. I'm going to ask a  
23 question about Exhibit 16.

24 MR. DILGER: The same  
25 question you just asked.

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2 MR. CARSTEN: I'm going to  
3 ask a question about Exhibit 16.

4 MR. DILGER: Ask your  
5 question.

6 BY MR. CARSTEN:

7 Q With respect to Exhibit 16, solely with  
8 respect to the figures 1 and 2,  
9 Ms. Cavosie, you are uncomfortable giving  
10 an opinion as to whether or not this  
11 device has U-shaped cups; yes or no?

12 A I'm uncomfortable giving an opinion on  
13 Patent Number 2,061,238, because I have  
14 not read it. I don't understand the  
15 details of it, I don't understand what the  
16 figures are without reading it.  
17 So, no, I feel uncomfortable giving you an  
18 opinion on Patent 2,061,238 because I have  
19 not read it and have not seen it until  
20 today.

21 Q Okay. The transcript will reflect my  
22 question.  
23 With respect to figures 1 and 2 and the  
24 images of 1 and 2, disregarding the  
25 patents, the claims, and the

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2 specifications, you are uncomfortable as  
3 an expert opining as to whether or not  
4 there are cups depicted and whether or not  
5 those cups have substantially portion --  
6 substantially parallel upper portions; is  
7 that correct?

8 A I don't feel comfortable answering that  
9 question because I have not read this  
10 patent (Indicating).

11 MR. CARSTEN: Okay.

12 Nate, if you have to leave,  
13 obviously we take this -- we will  
14 have to continue this and we  
15 dispute -- ahead of time, please,  
16 obviously, in the future, let us  
17 know when you need to leave on the  
18 West Coast at two something before  
19 the day of, so...

20 MR. DILGER: We provided a  
21 time and date from two until five.

22 MR. CARSTEN: You did not.

23 MR. DILGER: You are 30  
24 minutes over that.

25 MR. CARSTEN: Nate, Nate.

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MR. CARSTEN: That's fine.

MR. DILGER: Okay. Just  
e-mail it to me, please. Thank you.

THE VIDEOGRAPHER: The time  
is now approximately 5:33 P.M. This  
completes today's testimony of Tara  
Cavosie. Going off the record.

(Whereupon, the Deposition  
of TARA CAVOSIE concluded at 5:33  
P.M.)

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This is the Deposition of  
TARA CAVOSIE  
taken in the matter, on the date, and at the  
time and place set out on the title page hereof.

It was requested that the deposition be taken by  
the reporter and that same be reduced to  
typewritten form.

It was agreed by and between counsel and the  
parties that the Deponent will read and sign the  
transcript of said deposition.

DEPONENT'S CERTIFICATE

STATE OF \_\_\_\_\_:

COUNTY/CITY OF \_\_\_\_\_:

Before me, this day, personally  
appeared TARA CAVOSIE, who, being duly sworn,  
states that the foregoing transcript of his/her  
Deposition, taken in the matter, on the date,  
and at the time and place set out on the title  
page hereof, constitutes a true and accurate  
transcript of said deposition.

\_\_\_\_\_  
TARA CAVOSIE

Signed and subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK



DEPOSITION ERRATA SHEET

Assignment No.: 345240

Case Caption: CE SOIR LINGERIE CO., INC.,  
vs.  
IMAGINE ENTERPRISES, LLC.

Declaration UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of my  
Deposition taken in the captioned matter or the  
same has been read to me, and the same is true  
and accurate, save and except for changes and/or  
corrections, if any, as indicated by me on the  
DEPOSITION ERRATA SHEET hereof, with the  
understanding that I offer these changes as if  
still under oath.

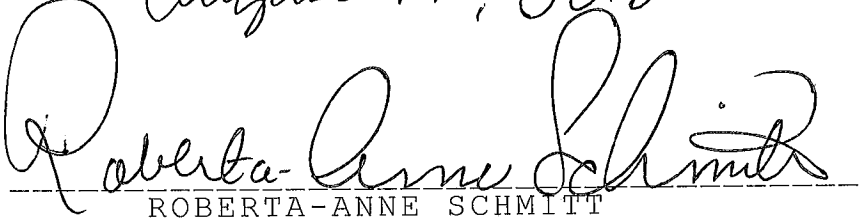
Signed on the \_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
TARA CAVOSIE

REPORTER'S CERTIFICATE

I, ROBERTA-ANNE SCHMITT, a Court  
Reporter and Notary Public in and for the State  
of New York, do hereby certify that I recorded  
stenographically the proceedings herein at the  
time and place noted in the heading hereof, and  
that the foregoing transcript is true and  
accurate to the best of my knowledge, skill and  
ability.

IN WITNESS WHEREOF, I have hereunto  
set my hand.

August 17<sup>th</sup>, 2012  
  
ROBERTA-ANNE SCHMITT